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COMMISSION ON HUMAN RIGHTS

Fifty-first session

SUMMARY RECORD OF THE 23rd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 14 February 1995, at 3 p.m.

Chairman: Mr. BIN HITAM (Malaysia)

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(a) INDIGENOUS ISSUES

The meeting was called to order at 3.10 p.m.

ADOPTION OF THE AGENDA (item 2 of the provisional agenda) (continued) (E/CN.4/1995/1 and Add.1 and Corr.1 and Add.2)

1. The CHAIRMAN announced that agreement had been reached in all the regional groups that a new sub-item (a), to be entitled "Indigenous issues", should be added to item 19 of the provisional agenda, in view of the considerations examined in paragraphs 13-15 of document E/CN.4/1995/1/Add.1 and paragraph 44 of document E/CN.4/1995/1/Add.2. The provisional agenda should therefore, he presumed, be revised accordingly.

2. It was so decided.

3. The provisional agenda, as revised, was adopted.

MEASURES TO IMPROVE THE SITUATION AND ENSURE THE HUMAN RIGHTS AND DIGNITY OF ALL MIGRANT WORKERS (agenda item 13) (continued) (E/CN.4/1995/73)

RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES (agenda item 20) (continued) (E/CN.4/1995/84, 103, 126, 128 and 132-134; E/CN.4/1995/NGO/14 and 18; E/CN.4/Sub.2/1993/34 and Add.1-4; E/CN.4/Sub.2/1994/36 and Corr.1; A/49/415 and Add.1)

IMPLEMENTATION OF THE DECLARATION ON THE ELIMINATION OF ALL FORMS OF INTOLERANCE AND OF DISCRIMINATION BASED ON RELIGION OR BELIEF (agenda item 22) (continued) (E/CN.4/1995/91, 92 and 123; E/CN.4/1995/NGO/11, 25, 26 and 30)

4. Mr. SHAMSHUR (Observer for the Ukraine) said that, despite the progress achieved, the question of the rights of persons belonging to minority groups still merited close attention especially in view of the pluralistic nature of many contemporary societies.

5. The persistence of ethnic and religious conflict, the consequences of which spilled over from one country to another and even threatened entire regions, called for renewed efforts on the part of the international community to seek constructive and lasting solutions to those problems. An important step in that direction would be for States to acknowledge the connection between the protection of minority rights and the promotion of human rights in general. That was particularly true for countries, like his own, which were in a difficult stage of socio-economic and political transformation; the only way to guarantee the rights of minorities in those countries was to create a democratic society with equal opportunities for all citizens.

6. His Government had already adopted legislation aimed at ensuring equality of political, social, economic and cultural rights and the free expression and development of ethnic traditions and religious beliefs. It was also elaborating human rights policies to serve as the basis for programmes addressing the specific needs of minority groups. With the appropriate legislation and policies in place, it was shifting its focus to implementation and monitoring and was paying special attention to inter-ethnic relations with a view to developing means of preventing or defusing ethnic tensions.

7. Unlike many of its neighbours, the Ukraine had managed to preserve social peace and tolerance; any extremist tendencies remained at the margins of the political spectrum. In line with its tradition of eliminating all forms of intolerance and discrimination, his Government had initiated plans for an international anti-Fascist congress to be held at Kiev in April 1995.

8. His Government hoped that other States would protect the rights of the Ukrainian nationals residing within their borders. That could be done most effectively through bilateral agreements. Rather than attempting to protect its nationals abroad, which was often the strategy used by former Soviet Union countries, his Government planned to ensure their legitimate rights through cooperation with the authorities of their country of residence. It assumed that those other States were bound by the same international obligations as those to which the Ukraine had pledged itself.

9. His Government attached great importance to the elaboration of mechanisms for conflict prevention. The majority of such efforts would be made at the national level through policy formulation and implementation and the creation of an institutional framework. At the same time, the expertise and intellectual resources of regional and international organizations would be welcome. He noted with satisfaction, in that connection, the efforts of the High Commissioner for Human Rights to review the human rights situations on the ground in several countries and the plan of the High Commissioner for Refugees to organize a conference on refugees, returnees and displaced persons in the countries of the Community of Independent States (CIS) and neighbouring countries.

10. He hoped that, at its current session, the Commission on Human Rights could discuss ways of improving and strengthening the Centre for Human Rights so that it would be able to carry out its mandate more effectively, particularly with respect to minority groups. Similarly, he supported decision 1994/4 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities concerning the establishment of an inter-sessional working group to examine constructive solutions to situations involving minorities and the preparation of an analytic report on minority issues.

11. Those efforts would facilitate the development of international rules concerning minorities and would help to clarify the relationship between the claims of ethnic groups and the interests of multi-ethnic States. In that connection, the preparation of an international convention on minority rights would further the general goal of the promotion and protection of human rights and his delegation was prepared to cooperate actively in that effort.

12. Mr. NARVAEZ (American Association of Jurists) said that more than one billion individuals were living in poverty, unemployed, unable to satisfy their most basic needs and with little hope of assistance from their own Governments. While some of those people lived in the developing countries of the North, the great majority lived in Latin America, Africa and Asia. That situation, which was historically rooted in the exploitation by the North of the human and natural resources of the South, was becoming increasingly serious. Lack of opportunities had given rise to massive migration from South to North and also from East to West.

13. Increasing unemployment, poverty and social disintegration appeared to be inherent and permanent characteristics of the current model of technological development and the international economy. In order to control immigration, the Northern countries were promoting the idea of global population control, imposing a check on migration but not on the flow of resources from South to North.

14. In defiance of constructive efforts to resolve those problems, the developed countries had failed to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Those countries continued to promulgate repressive legislation against migrant workers, such as Proposition 187 in the United States of America which barred illegal immigrants in California from access to social services.

15. The press had published reports indicating that the rights of foreign workers were being abused by members of the diplomatic corps, protected by diplomatic immunity. Xenophobia was on the rise. Solutions to the indebtedness of the developing countries had been put on indefinite hold. Trade barriers against the developing countries were being erected, while those same countries were being asked to open up their markets. To stem the tide of immigration from the South, the United States of America had begun the construction of a wall which would cover its entire border with Mexico.

16. While awaiting genuine, just and comprehensive solutions to the problems of development, Governments could not continue to exclude immigrants, thus forcing them into situations of illegality and, at times, delinquency. Migrant workers and their families, whatever their legal status, were as entitled as any other group to equal protection and respect for their rights.

17. The Commission must urge the many States that had not yet done so to sign and ratify the International Convention.

18. Ms. NEURY (Centre Europe - Tiers Monde) said that she wished once again tc draw attention to the unacceptable working conditions of various individuals employed by diplomatic missions and embassies. Many of the provisions contained in international instruments, such as ILO conventions, and national legislation were being violated daily.

19. The most fundamental rights of workers were being systematically denied, in violation of the Universal Declaration of Human Rights and the International Covenants on Human Rights. Moreover, diplomatic immunity was being abused by those benefiting from it, in violation of the preamble to the Vienna Convention on Diplomatic Relations and the laws of the host country.

20. Since 1990, nearly 50 such cases - with supporting evidence - had been registered in Geneva. The complaints, which had been reported to Syndicat sans Frontières, could be viewed on a five-point scale. At the bottom were the "slaves" in the ILO sense - individuals without papers who worked without pay or benefits and were sometimes ill-treated. At the second level were domestic workers who earned SwF 200 to 800 per month, without any weekly break or annual holidays. At the third level were employees earning from SwF 2,000 to 2,200 per month for 16 to 18 hours of work per day. At the fourth level were workers who had reached the age of retirement and had neither social-security

coverage nor the resources to return to their countries of origin. The top level represented workers who received a more or less decent wage - between SwF 3,000 and 4,000 per month. The common feature of the cases reported at every level, however, was that not a single person belonged to any social-security system such as a pension fund, health insurance, unemployment insurance, or family allowances arrangement.

21. She was aware that some countries, particularly developing countries, had great difficulty in financing their delegations. Nevertheless, their employees' staff should not be the ones to suffer. The countries concerned might consider proposing that a joint United Nations fund should be set up to assist the delegations.

22. Negotiations on the working conditions of staff employed by the diplomatic community had been going on for four years with little results, while the number of complaints continued to rise. In an attempt to begin a dialogue on that issue, Syndicat sans Frontières had approached a number of top-level officials, including the permanent mission of Switzerland, the Secretary-General, the Director-General of the United Nations Office at Geneva, the Director-General of the International Labour Organization, the doyen of the diplomatic corps and various ambassadors and ministers of labour. In every case, the buck had been passed.

23. She urged the Commission on Human Rights to do everything possible to put an immediate end to the violations of the rights of the workers concerned. In addition, her organization was requesting the following: establishment of a commission to study and report on the situation of workers in the diplomatic sector and to elaborate a collective convention for each category of worker; creation of a compensation fund for workers who had been abused morally, physically or economically; respect for and implementation of the provisions of the various instruments relevant to the situation of diplomatic workers; redefinition of the concept of diplomatic immunity; and establishment of a dialogue to facilitate the solution of pending cases.

24. Ms. GALLEGUS (Human Rights Advocates) said that, while there were many international instruments in force that would cover the rights of migrant workers and their families, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provided the specific protection needed by that group. The scope of the Convention was broad and included particular subgroups which were not necessarily covered by other treaties. It provided protection for all migrant workers, with or without documents, and additional protection for special circumstances which were unique to migrant workers.

25. It was clear that further efforts were needed, however, to protect the rights of migrant workers, since the International Convention had been ratified to date by only two countries. In many host countries, migrant workers met all the obligations of citizenship but were denied equal rights and opportunities. Anti-immigrant and racist attitudes had given rise to laws which violated the fundamental rights of migrant workers and their families. In the United States of America, the recent passage of laws of that kind at the state level demonstrated the vulnerability of migrant workers without the protection of the Convention.

26. In November 1994, voters in California - a state with a sizeable immigrant population - had adopted Proposition 187 which barred undocumented persons from access to public health care, public schools and social services. Under that Proposition, public institutions were required to report to federal immigration and naturalization services all individuals suspected of being undocumented. Proposition 187 might also adversely affect undocumented individuals residing legally in the United States.

27. Implementation of Proposition 187 had been temporarily suspended pending a test of its constitutionality. Nevertheless, its implications had to be faced. Under that legislation, many migrant workers and their families would either be denied or fear to seek adequate health care, and that might in some cases jeopardize their own lives or the health of the entire community. Workers would also be denied various social services and financial assistance. Their children would not be allowed to attend public school, thus perpetuating a cycle of deprivation, low social and educational status, and the stratification of society along ethnic lines.

28. Laws such as Proposition 187 were an example of arbitrary discrimination and harassment of migrant workers and their families and denied them equal treatment and opportunities. The international community must renew its efforts to protect the rights of those individuals. She called upon all States that had not yet done so to ratify the International Convention. The Commission on Human Rights should also request the Sub-Commission to establish a working group to gather evidence of violations of the rights of migrant workers and their families.

29. Ms. MARTENSEN (International Movement against All Forms of Discrimination and Racism) said that, in February 1995, at a time when representatives of nearly 40 countries were gathered at Auschwitz for a solemn commemoration of the Holocaust, an article had appeared in a mainstream Japanese magazine, Marco Polo, in which the author had maintained that reports of the extermination of Jews, Sinti, Roma and other communities during the Second World War had been mere propaganda, devised by Polish Communist leaders or members of the former Soviet Union.

30. Although the magazine had since been shut down, the author of the article continued to maintain his position. That revisionist rhetoric had been an eerie echo of a speech by the Japanese Minister of Justice in May 1994 in which he had stated that the 1937 Nanjing massacre in China was a fabrication. More recently, the Prime Minister of Japan had retracted a remark he had made some weeks earlier that Japan had been partly responsible for the division of the Korean Peninsula following the Second World War.

31. It was against the backdrop of Japan's denial of its role during the Second World War that her organization wished to draw attention to the situation of Japan's Taiwanese and Korean minorities. A large number of that group had been forced to fight in the Japanese Army; many had been killed or wounded and some had even been punished for war crimes by allied wartime tribunals. In 1952 the Japanese Government had revoked the Japanese nationality imposed on Korean and Taiwanese during the period of colonization, and had then used the absence of nationality as a legal basis for denying members of those groups resident in Japan their basic rights.

32. Under a 1965 treaty, the Japanese Government had agreed to pay US$ 300 million to the Government of the Republic of Korea. A certain amount had been allocated to the families of deceased Korean soldiers and to individuals who had lost property and savings during the Japanese colonization of Korea, but no form of compensation had reached the Koreans living in Japan. Attempts to obtain compensation through domestic remedies had not been effective. A claim filed in 1992 by Taiwanese who had served in the Japanese army had been rejected by the Supreme Court on the grounds that the claimants were not Japanese nationals.

33. The Human Rights Committee had expressed concern at the existence in Japan of certain discriminatory practices against social groups, such as Korean permanent residents. More specifically, the Committee had found that persons of Korean and Taiwanese origin who had served in the Japanese army and who no longer possessed Japanese nationality were discriminated against in respect of their pensions.

34. In response to a similar case involving retired Senegalese soldiers who had served in the French army prior to the independence of Senegal, the Committee had earlier observed that it was not the question of nationality which had determined the granting of pensions to the authors of the complaint but the services rendered by them in the past. A subsequent change in nationality could not in itself constitute sufficient justification for different treatment.

35. Her delegation urged the Government of Japan to sign the first Optional Protocol to the International Covenant on Civil and Political Rights so as to enable the Taiwanese and Korean minorities in Japan to communicate their cases to the Human Rights Committee. It also urged the Government of Japan to fulfil its obligation to provide compensation to the minority victims of Japanese aggression, since payment of such compensation as a means of repairing a wrongful act was a well-established principle of international law.

36. Mr. SANDOVAL (International Indian Treaty Council (IITC)) said that, for many years, his organization and the National Chicano Human Rights Council (NCHRC) had been drawing the Commission's attention to the inhuman working, health, education and housing conditions of migrant workers in the Americas, many of whom were indigenous peoples. It was a matter of regret that, to date, only five States had signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

37. Migrant farm-workers were not protected by social legislation covering such areas as unemployment insurance, worker's compensation, fair labour standards, and the right to collective bargaining, despite the fact that they generally paid more in taxes than they received in social services. In California, where there were nearly 2 million migrant and seasonal farm-workers, they were kept under harsh wage, housing and working conditions with the constant threat of deportation used as a weapon against them.

38. In recent years, given the protracted recession facing the states along the United States/Mexican border, migrant workers crossing that border faced especially harsh consequences, including killings, tortures, unwarranted strip

searches of women, thefts of money and personal belongings, denial of medical treatment, withholding of food and water for inhumanely long periods of time, and use of manacles on hands and feet on long-distance journeys.

39. The climate of overt hostility towards migrant farm-workers had reached disturbing proportions, with government-supported measures to deny basic services to the undocumented ones. Proposition 187 in California sought to deny educational, medical and social services to those who were unable to prove their citizenship. That Proposition was also being extensively promoted in other states with the ostensible aim of ridding them of persons who took jobs from United States citizens and utilized public services without paying their fair share as taxpayers.

40. Such assertions targeted the poorest and most desperate, while serving as a smoke screen for the inability or unwillingness of the Government to address larger and more systemic economic problems. The effect of the legislation had been to unleash racial hatred against millions of people, especially migrant farm-workers who, by virtue of their colour, accents and physical appearance, and because of their relative isolation in far-flung rural communities and labour camps, were easy targets.

41. His organization urged ratification by all countries of the International Convention and called upon the United States to ratify immediately ILO Conventions No. 98, concerning the application of the principles of the Right to Organise and to Bargain Collectively, and No. 169, concerning Indigenous and Tribal Peoples in Independent Countries.

42. The religious practices and spirituality of indigenous peoples were the most persecuted of all the world's religions or beliefs. Non-indigenous peoples apparently had great difficulty in understanding that, without the right to their traditional lands, indigenous peoples lost their relationship to Mother Earth and their identity as people. Western institutions and economic practices separated man from his spiritual connection to the natural world, since they held that earth was not a part of humanity's identity but rather a commodity to be exploited as part of the global market. Concerned only with immediate profit, non-indigenous societies were lost without a vision of the future. On the other hand, for indigenous peoples, the right to self-determination over their traditional lands included a spiritual dimension which encompassed all creation as being complete and interrelated.

43. Many countries still maintained laws and regulations which violated the international standards set forth in the Universal Declaration of Human Rights, particularly article 18 thereof concerning the right to freedom of thought, conscience and religion. The Mexican and United States Governments, for example, continued to classify the sacred Peyote medicine as a drug and severely restricted its use. The Mexican Government prosecuted indigenous people who practised traditional spiritual ceremonies involving the use of Peyote. In the State of Florida in the United States of America, the Seminole indigenous nation had taken steps to protect indigenous burial sites. The State had, however, made efforts to exclude them from discussions on the retrieval of ancestral bones on the grounds that the Seminole nation was not recognized by the Federal Government.

44. Another violation of traditional religious beliefs was taking place on Mount Graham in Arizona, which was considered holy ground by the Apache people. The Holy See, the University of Arizona and the Max Planck Institute were currently constructing the world's largest telescope on that sacred mountain. His organization called upon the parties involved to withdraw immediately from the project, which would desecrate a site sacred to the Apache people.

45. He requested that the concerns raised in his statement be considered by the Special Rapporteur on the question of religious intolerance.

46. Mr. van PRAAG (Pax Christi International), also speaking on behalf of the Society for Threatened Peoples and the Unrepresented Nations and Peoples Organization (UNPO), said that the international community had reached a very dangerous point with respect to the protection of minorities, indigenous peoples and captive nations and peoples. Moreover, the United Nations and its Member States were once again moving in a dangerous direction which would promote rather than prevent armed conflict. The organizations on whose behalf he was speaking therefore supported the creation of a working group on minorities and disenfranchised peoples and the appointment of a special rapporteur to improve early-warning possibilities. The problem, however, lay not so much with early warning but rather with the lack of political will to act upon the warnings.

47. The massacre of thousands of people in Chechnya, a massive violation of the human rights of an entire people, could probably have been prevented if Western Governments had not endorsed the "legitimate right" of the Russian Federation to undertake military action against the Chechen people. Despite the daily display of the carnage in Grozny, the United Nations had remained silent for the entire first month of the war, paralysed because it was a permanent member of the Security Council that was committing the crimes against humanity.

48. The organizations on whose behalf he was speaking had obtained Russian Government documents which detailed the plans for the massive deportation of Chechens to various isolated spots deep inside Russia. Copies of those documents would be supplied to the Chairman of the Commission. In conjunction with the thorough destruction of Chechen cities, villages and infrastructure, the documents suggested that the intention of the Russian Federation was not merely to achieve a limited political objective in Chechnya but to eradicate that Republic and deport and destroy its people.

49. There was also a real danger that the conflict would spread to Ingushetia. Twice recently, the Russian Vice-Premier had accused the President of Ingushetia of giving refuge to the Chechen President. Indeed, the first people to be killed by Russian tanks in December 1994 had been Ingush civilians standing in front of Russian tank columns and urging them to turn back. As the Government of the Russian Federation knew full well, and as he himself was personally aware, the Chechen President was in Chechnya and not in Ingushetia.

50. The Government of the Russian Federation claimed that the Chechens had violated the Russian Constitution by declaring their independence. However,

Chechnya had declared its independence when the Constitution of the former Union of Soviet Socialist Republics - which expressly permitted it to do so - was in force. Chechnya therefore had not violated the Russian Constitution, which had been adopted much later, following a referendum in which most non-Russian peoples and treaty partners appeared to have voted against it and in which the Chechens had not participated. It was noteworthy, incidentally, that that same Constitution prohibited the use of military force against the population within the Russian Federation. By its use of military force in Chechnya, the Government of Russia was thus violating the Russian Constitution.

51. Regardless of the importance of that particular legal issue, the tacit endorsement by the international community of Russia's action was entirely unacceptable. In the first place, violation of human rights and minority rights could never be the internal affair of any State if it was accepted that human rights were part of international law. Secondly, the international community was in the process of sanctifying the principle of territorial integrity as an absolute right which Governments were obliged to enforce at any cost, including the destruction of a minority claiming the right to self-determination.

52. While the right to self-determination was not an absolute right and must be balanced by other rights and principles of international law, including the principle of territorial integrity, it was unacceptable for State Governments to impose unilaterally their notion of territorial integrity on peoples in pursuit of their self-determination. Instead of encouraging the resolution of the dispute between Chechnya and the Russian Federation through dialogue, the international community had encouraged the unilateral imposition by force of the principle of territorial integrity. That was a most dangerous development, since it sent an unmistakable signal to all dictators that it was legitimate to crush any movement which could be labelled as separatist or as a threat to the territorial integrity of the State concerned.

53. It was a moot point whether the international community and the United Nations could still respond credibly to Government violence against minorities and peoples when Governments believed that they enjoyed a kind of immunity if they used the magic formulas of "territorial integrity", "protection of sovereignty" and "prevention of separatism". He mentioned the cases of Taiwan, East Timor, Abkhazia and Kosovo as illustrations in that regard.

54. Some members of the Commission were already trying to pre-empt any legitimate pronouncement by the Commission by claiming that the human rights violations for which they were responsible were to be discounted because they were combating separatism. Thus China was hoping to escape censure for its gross violations of human rights in Tibet by politicizing the question. It was difficult to understand how the Commission could watch in silence the destruction by Communist China of a gentle people with a rich civilization and spiritual tradition. Since the Commission recognized that population transfers were a violation of human rights, it could not regard the massive transfers of Chinese to all accessible villages and towns in Tibet as an internal affair of China.

55. The Commission could not remain silent either as Nigerian troops intensified their reign of terror in Ogoniland in preparation for the trial by a special military tribunal of the Ogoni human rights and environmentalist leader, Ken Saro Wiwa. He also wished to draw attention to recent press reports that the United States had pressed the Government of Mexico to crush the indigenous rebellion in Chiapas and capture its leaders, failing which the economic aid package that was essential to save that country's economy would be cancelled.

56. It was a matter of concern that the United Nations had entered its fiftieth year of existence by condoning war as a means of resolving disputes, as long as such wars were waged by a Government represented at the United Nations against peoples, nations and minorities within the borders claimed by that Government. By doing so, the Organization had sent an unmistakable message to nations, peoples and minorities everywhere that the international community would not protect them unless and until they were recognized as separate and independent States and had become members of the United Nations.

57. Mr. ANWAR (World Federation of Democratic Youth), referring to the plight of the Mohajir nation in urban Sindh, a southern province of Pakistan, said that the Government and armed forces of Pakistan were committing crimes against the Mohajir nation, and especially against Mohajir youths. Mohajirs, who constituted over 15 per cent of the population of Pakistan, had been subjected to socio-economic and cultural subjugation since the creation of the country.

58. In particular, the naked aggression of the Pakistani army against the Mohajir nation since 1992 had rendered at least 50,000 Mohajir men, women and children destitute because their breadwinners had either been illegally detained or forced to leave their homes in fear for their lives. Tens of thousands of political prisoners, including prisoners of conscience, were held without charge or trial under special detention laws. The torture of detainees was routine and hundreds of people were reported to have been executed by the security forces.

59. In a novel method of victimization of the Mohajir nation, the army had recently begun the practice of cordoning off areas populated by Mohajirs and conducting house-to-house searches during which all males over 12 years of age were taken away and detained, while women and young girls were molested and sexually assaulted.

60. An urgent solution was needed to the problem facing the Mohajir nation whose sufferings were no less devastating than those of the people of Kashmir or of Bosnia and Herzegovina. The Commission could diffuse the tension and avert a political calamity by forcing the army and Government of Pakistan to start a sincere dialogue with the sole representative party of the Mohajir nation with the aim of achieving a just and lasting political settlement.

61. Mr. CHOEPHEL (International Association of Educators for World Peace) said he wished to draw attention to a written statement by his organization and the Society for Threatened Peoples (E/CN.4/1995/NGO/26) containing information concerning the new restrictions on religious freedom in Tibet

imposed about the same time as the Chinese authorities had issued their invitation to the Special Rapporteur on the question of religious intolerance to visit Lhasa. It was ironic that new directives regarding such "problems" as the unauthorized construction of monasteries, religious "interference" in education and birth control, the existence of monks under the age of 18 and participation by Communist Party members in religion had been published in the official Tibet Daily on the very day that the Special Rapporteur had arrived in the city. Under one directive, Tibetan Buddhists were enjoined to reform all religious tenets and practices that did not correspond to a socialist society.

62. The figures for monks and nuns in Tibet and temples open for worship, cited by the representative of China at a previous meeting, contradicted the lower figures given by the Nationalities and Religious Affairs Commission of the so-called Tibet Autonomous Region to a Swedish human rights delegation in 1994. In any case, those figures bore no relationship to the many thousands of monasteries, convents, temples and historical sites that had been destroyed by the Chinese authorities between the mid-1950s and 1979. Current expenditure on the Potala Palace and the memorial hall for the late Panchen Lama could be regarded only as a fractional repayment for the religious plunder in Tibet.

63. The views of the Special Rapporteur as set forth in his report (E/CN.4/1995/91) were of historic importance in that he was the first United Nations human rights expert to be admitted to Tibet for over four decades. In that connection, reference should be made to a written statement submitted by the International Fellowship of Reconciliation (E/CN.4/1995/NGO/25) documenting cases of denial of access to the Special Rapporteur during his visit. The Special Rapporteur's office in Geneva had also received letters from persons in Tibet who had been unable to contact the United Nations delegation because of security operations. The Venerable Yulo Dawa Tsering was liable to face repercussions because of his outspoken comments to the Special Rapporteur during the visit and his well-being should be monitored.

64. Despite the Special Rapporteur's visit, the Chinese authorities continued to clamp down on religious freedom: 29 nuns and 57 monks had been arrested in 1994 and one nun and one monk tortured to death; the rebuilding of monasteries had been restricted; a ban had been imposed on the admission of new monks and nuns, and the Dalai Lama's photographs had been banned. Such religious intolerance constituted a gross and systematic violation of human rights and had been condemned by the Vienna Declaration and Programme of Action. China had a duty to preserve the unique characteristics of Tibetan Buddhism instead of suppressing its practice and philosophy.

65. His organization fully supported the Special Rapporteur's recommendations to the Chinese Government, particularly his call for the release of religious prisoners. It hoped that the Chinese authorities would continue to welcome United Nations experts whenever they expressed the wish to visit Tibet or China.

66. Ms. BAGHISTANI (International Committee on European Security and Cooperation) said that her organization was concerned about the fundamental human rights of Yazidis and other non-Muslim minorities in Iraq and Turkey, such as the Alawis, Armenians, Assyrians, Chaldeans, Jews and Zoroastrians.

67. Despite Turkey's commitment to protect minorities under the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and also under the Treaty of Lausanne of 1923, 37 Alawi dignitaries had been burned alive during a peaceful assembly in Sivas in 1993. The Turkish authorities blamed Islamic fundamentalists, but they were themselves held responsible by public opinion.

68. Despite Iraq's obligations to protect minorities under the still valid Declaration of the Kingdom of Iraq of 1932, practically all of the country's Kurdish Jews (some 50,000) had been driven out of Iraq prior to the coming into force of the United Nations Declaration in 1981.

69. Most of Turkey's 200,000 Yazidis had been forced into exile in Western Europe. Some 2,000 Yazidi and other Kurdish villages had been destroyed by the Turkish authorities. Yazidis were denied access to higher education, public office and commercial markets. Turkish parliamentarians who had sought to redress the situation had been given harsh prison sentences or had fled the country for fear of the death penalty. One had even been killed.

70. However, faced with a growing threat from Islamic fundamentalists, even hard-core nationalists in Turkey had begun to look at the Kurdish question more in terms of possible new alliances and genuine partnerships, a process that had been helped by commendable positions and policies of restraint by the Kurdish leadership.

71. Eyewitnesses and victims brought to the United Nations in Geneva by the Geneva representative of the Mosul Vilayet Council had testified that, in the government-controlled part of Iraq, the Yazidis were exposed on religious grounds to widespread discrimination in education, the labour market, public office and trade. Since 1975, some 300,000 Yazidis had been confined to seven concentration camps near their ancestral villages and their lands and houses had been given to regime supporters. Yazidi women had been raped and their husbands killed. No charges could be brought, because government agents were given immunity from prosecution by a governmental decree.

72. Among the Yazidi and other Kurdish victims prevented by the Iraqi authorities from coming to Geneva were children who had been tortured and mutilated. It was reported that, since the early 1970s, Yazidi children had been systematically taken to Iraqi health care centres, purportedly for vaccination but actually for sterilization.

73. Her organization called on Governments and non-governmental organizations, particularly the International Committee of the Red Cross, to take steps to ensure the prompt release of the 300,000 Yazidis who were being held as religious prisoners by the Iraqi Government. She trusted that the Commission would take such measures as it deemed proper and effective in the circumstances.

74. Mr. HANDAL (International League for Human Rights) said that his organization was particularly concerned about allegations of religious intolerance in Afghanistan, the Islamic Republic of Iran, Myanmar and Viet Nam.

75. The emergent Talibaan movement in Afghanistan was seeking to impose strict religious orthodoxy on the general population, often against its will. In the Islamic Republic of Iran, members of the Baha'i community continued to be deprived of their civil rights because their religion was not recognized by the Government. As a result Baha'is could not be legally married or divorced, they could not obtain passports or entry visas, and they were denied the right of assembly and the right to elect and maintain their administrative institutions.

76. In Myanmar, members of the Buddhist, Christian and Muslim communities continued to be persecuted. Monasteries, chapels and cemeteries were destroyed, monks were forced by the army to serve as porters and communities of Muslims and Christians had been forcibly relocated.

77. In Viet Nam, the Government had established State-controlled umbrella organizations to monitor the activities of religious organizations and appeared to have mounted a campaign of suppression against monks and lay affiliates of the banned Unified Buddhist Church.

78. His organization requested the Special Rapporteur on the question of religious intolerance to undertake on-site investigations into all those allegations. It urged the Member States to cooperate with him, responding expeditiously to requests for information and taking all possible measures to enable him to develop informed opinions on the situations in their countries.

79. The United Nations should make the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief available to all its organs and agencies and should encourage the Member States to disseminate it in their respective national languages. In addition, it should provide training courses to equip the staff of the Centre for Human Rights with an adequate working knowledge of international human rights standards on religious freedom.

80. Mr. AMOR (Special Rapporteur on the question of religious intolerance) said that he was gratified by the interest shown in his report (E/CN.4/1995/91). His visit to China had been particularly instructive. He had found there a highly complex situation, one that had long been hostile to the very idea of religious freedom but that was undoubtedly changing. However, the softening of attitudes should proceed at a faster pace and on a wider scale, and sustained monitoring was necessary to ensure that religious rights were protected against the vagaries of political trends and circumstances.

81. He wished to make three concluding observations. The first concerned the desirability of closer cooperation with States in the form of *in situ* investigations. Dialogue with all parties, including all denominations affected by religious intolerance and discrimination, should be intensified. Other formulas besides those of allegation and response should be developed to

enhance such dialogue and ensure the more effective implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. A corresponding increase in the resources at his disposal would, of course, be necessary.

82. His second observation was that 1995, as the International Year of Tolerance, provided an opportunity to enhance awareness of the nature and implications of intolerance. In that context, it was important to highlight the political dimension of many manifestations of religious intolerance. The International Year of Tolerance was also a propitious occasion for developing certain common regulations and principles to be applied in dealing with such phenomena.

83. His concluding observation concerned the importance of education in preventing intolerance, discrimination, hatred and violence, including that motivated by religious extremism. The questionnaire on religious education in primary and secondary educational establishments might be used to highlight a number of common values and principles that would form the basis for a programme of tolerance and non-discrimination. Preliminary conclusions based on the findings of the questionnaire would be presented to the Commission at its fifty-second session.

84. He further proposed that the tenth report on the implementation of the Declaration, to be submitted to the Commission at its next session, should take stock of the progress made over the previous decade.

Statements in exercise of the right of reply

85. Mr. NAITO (Japan) said that his country's Government had dealt sincerely with the issues arising from the Second World War, in accordance with the relevant peace treaties. The question of compensation for war injuries was dealt with in various ways under Japan's domestic law. In most cases it was required that recipients should hold Japanese nationality and that requirement existed for rational reasons. For example, it was incorporated in the Aid Law for Surviving Family of the War Dead and Injured because aid provided under the Law represented government compensation for war sacrifices incurred by military and paramilitary personnel and others.

86. The scope of aid recipients, the content of the aid, and other related matters were a matter of legislative policies containing a policy judgement of an extremely high order. The issue of property and claims between Japan and the areas separated from it or which became independent from it after the War formed part of the circumstances behind the enactment of the Aid Law and was intended to be the subject of special arrangements. In those circumstances, his Government did not intend to rescind the nationality requirement of the Aid Law.

87. Mr. NGUYEN VAN SON (Observer for Viet Nam) said that the allegations regarding religious freedom in his country, made by a non-governmental organization, were unfounded. He referred the Commission to the statement he had made the previous day under item 20 of the provisional agenda (E/CN.4/1995/SR.21).

88. Mr. SALMAN (Observer for Iraq), referring to the statement by the representative of the International Committee on European Security and Cooperation, said that the speaker in question was not an Iraqi but a European Jewess married to an Iraqi Kurd who had been trained in Israel to carry out acts of terrorism against Iraq. Her false allegations were merely part of a political game that was being played against Iraq.

89. Under the Constitution of Iraq, all citizens were equal before the law and there was no discrimination on grounds of race, sex, language or religion. His Government had taken positive action to ensure that minorities enjoyed full human rights, in the areas inhabited by Yazidis and other minorities also.

90. There were in all only a few thousand Yazidis, who lived in two neighbouring villages in the governorate of Nineveh. Their representative had direct contacts with the official and legislative channels of the Iraqi Government.

91. Mr. EGUZ (Observer for Turkey) said that the representative of the International Committee on European Security and Cooperation had, by referring to Alawis as non-Muslims, merely revealed her own gross ignorance.

REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-SIXTH SESSION

(a) INDIGENOUS ISSUES

(agenda item 19) (E/CN.4/1995/2-E/CN.4/Sub.2/1994/56, E/CN.4/1995/83, 119 and 120; E/CN.4/Sub.2/1994/3, 33 and Corr.1, 35, 41 and 55; E/CN.4/1995/NGO/12)

92. Ms. ATTAH (Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities), introducing the report of the Sub-Commission on its forty-sixth session (E/CN.4/1995/2), mentioned that her own report appeared as document E/CN.4/1995/83. The Sub-Commission had met from 1 to 26 August 1994 and, despite the large number of speakers, had been able to complete its work on time. There had been two sessional working groups, one on the administration of justice and the question of compensation (to victims of gross violations) and the other on the methods of work of the Sub-Commission.

93. At the time of the session, the crisis in Rwanda had just been unfolding and the Sub-Commission had been most anxious that the genocide should not spill over into Burundi; the need for a quick and effective response to crisis situations had again been stressed. The need for a stronger mechanism to protect the human rights of United Nations staff members and other humanitarian personnel, who were at risk from warring factions, had also been emphasized.

94. Following the receipt of two final studies by special rapporteurs - on human rights and the environment (E/CN.4/Sub.2/1994/9) and the right to a fair trial (E/CN.4/Sub.2/1994/24) - the Sub-Commission was recommending two new studies: on human rights and income distribution and on the question of the implications for human rights of United Nations action, including humanitarian

assistance, in addressing international humanitarian problems and in the promotion and protection of human rights. Three other reports were also recommended for the Commission's consideration and the Sub-Commission also believed that the creation of a working group on minorities would further enhance the mechanisms for safeguarding the rights of minorities.

95. The Sub-Commission had examined the draft United Nations declaration on the rights of indigenous peoples, which was the outcome of a painstaking and time-consuming dialogue. It was the first of its kind in standard-setting mechanisms, for it had involved the beneficiaries directly in the drafting process; and it had not been easy to arrive at. Indigenous peoples, and some Governments, had had differences regarding some of the terminology. For example, the indigenous peoples would never accept the singular noun "people", owing to the stark differences between indigenous peoples around the world.

96. The draft declaration should be studied in its totality, not piecemeal, and any amendments should seek to clarify the text rather than delete concerns, since the draft was the best that could have been achieved, at least as a starting point. Representatives of indigenous peoples without consultative status should be allowed to participate in discussions on the draft declaration at every level. She paid tribute to the Chairman/Rapporteur of the Working Group for her personal commitment to the task of drafting the declaration.

97. She drew the Commission's attention to the conditions in which the Sub-Commission had had to work. Lack of funds for the Centre for Human Rights had even affected the availability of interpreters. Despite the widespread interest in human rights issues, there had been no extra meetings and speaking time had had to be curtailed, a move that had had a particular impact on the non-governmental organizations. The experts members of the Sub-Commission were also unhappy at the impossibility of examining issues, particularly thematic reports, more thoroughly. She hoped that the Commission would look into the question of improved funding for the Centre and of allocating more time and resources to future sessions of the Sub-Commission.

98. Mr. CHOGYAL (China), having welcomed the useful work done by the Sub-Commission on promoting the implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and the final report and working paper on the subject submitted by the Special Rapporteur (E/CN.4/Sub.2/1993/34 and Add.1-4 and E/CN.4/Sub.2/1994/36 and Corr.1), said he had also noted the Sub-Commission's recommendation that an inter-sessional working group on minority issues should be established. However, any work in that direction should be carried out very cautiously, with due regard for the sovereignty and territorial integrity of States and in full respect for the right of States to resolve minority problems in accordance with the Declaration and with their own respective circumstances.

99. The use of political, legal, economic, administrative and other measures to manage the relationship between nationalities was an important matter for many Governments. In some parts of the world, sharp contradictions persisted among nationalities and ethnic groups, resulting variously in confrontation, armed conflict, xenophobia and riots. The Sub-Commission had recommended for

adoption some very important decisions and resolutions to allay the deep concern of the international community and the Commission should pay them due attention.

100. Equality among all nationalities was imperative, irrespective of their population, differences in historical and cultural background or their level of social and economic development. Any artificial division into superior and inferior categories should be firmly rejected, particularly on the fiftieth anniversary of the victory of the anti-Fascist war, and effective measures should be adopted to eliminate neo-racism and xenophobia.

101. Secondly, the protection of minorities should be promoted by peaceful and constructive means. In a multiracial society, as many of the countries of the world were, the issue of solidarity and harmony among nationalities affected the stability and development of society as a whole. It also had a bearing on the progress of the nationalities themselves. Full consultation should therefore take place among all the nationalities concerned and their participation in the management of affairs at every level should be ensured.

102. Thirdly, minority nationalities should be assisted in developing economically, culturally and socially. For reasons of history and geography, the social and economic development of different nationalities within a country was often unbalanced. Unless solved, such a problem could affect the stability and progress of the whole of society. Favourable policies should therefore be adopted to help such regions to catch up with the developed regions as quickly as possible, both for their own sake and in the interests of the country as a whole. Economically advanced nationalities should be encouraged to help economically underdeveloped ones.

103. Lastly, political systems should be formulated and adopted in the light of the specific situations of the countries concerned. In view of the different histories, cultures and levels of social development in various countries, decisions on how to harmonize the relationship between the nationalities and to safeguard the unity of the country was entirely the internal affair of the countries themselves, to be decided by them. There was no fixed model.

104. All countries should exchange views on a footing of equality and mutual respect; they should learn from others in order to improve themselves. No country should impose its own ideology and social system on others, still less use its own values as a pretext for interfering in the internal affairs of other countries.

The meeting rose at 5.30 p.m.